**Ong Hock Sim J.:** I am a little doubtful that this is a case where the appellant has a right of appeal under the Criminal Procedure Code. Previous cases are reported where appellants have appealed from an order as that made by the learned magistrate. I propose in this instance to deal with this matter by way of revision where I feel that my power to rectify an order which has been wrongly made by the lower court will not be questioned.

The appellant was a complainant in a case under section 14 of the Minor Offences Ordinance against one Khor Hoon Tee. At the end of the case, the magistrate found the charge proved against the defendant and bound her over under section 183(2)(b) of the Criminal Procedure Code. The defendant did not give evidence on oath but merely made a statement from the floor of the court. Such statement does not in my view constitute evidence upon which the learned magistrate could bind over the complainant under section 74(1) of the Criminal Procedure Code. The right of cross-examination was denied to the complainant and clearly the complainant could not in law cross-examination the defendant (*Ip Ying Wah* v. *Public Prosecutor* [1]).

The power of a magistrate to bind over a complainant under section 74 should be sparingly and carefully used (*Mek binte Awang* v. *Che Mas binte Awang* [2]). Upon authority it is also clear (*Ariffin Mohamed Ariff* v. *R.*[3]) that an order under section 74 must be based upon positive evidence that complainant is likely to commit a breach of the peace. In the present case, upon the record the incident took place in the house of the complainant and I can find nothing on record which justifies the course of action taken by the learned magistrate.

Having accepted the evidence of the complainant, which was corroborated by an independent witness, it seems to me that the binding over of the complainant purely on what the defendant probably said in instigation would tend to deter people from seeking justice in our courts.

I therefore quash the order binding over the complainant.

*Appeal allowed.*

Solicitors: *Goh Eng Kee & Co.*

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## LIM KIAT MOY v. HAMZAH

**[F.C. (Barakbah L.P., Azmi C.J. (Malaya) and McIntyre J.) January 24, 1967]**

**[K.L. — Federal Court Civil Appeal No. X32 of 1967]**

*Land Laws — Caveat — Date of notice — Service — National Land Code, 1965, s. 326, Form 19C.*

This was an appeal against the decision of the High Court rejecting the appellant's application to extend the life of a private caveat registered against a piece of land. The appellant had lodged the caveat against the said land on December 30, 1965. On March 25, 1966 the collector of land revenue, at the instance of the respondent, issued a notice for the removal of the caveat under the provision of section 326 of the National Land Code. This notice was served on the appellant on April 6, 1966. The collector removed the caveat on April 29, 1966. On April 8, 1966 the appellant had taken out an originating summons to apply for an order for the extension of the caveat and the summons came on for hearing on May 2, 1966. The learned judge held that the period of one month allowed by section 326 of the National Land Code had already expired and therefore he could not extend it ([1966] 2 M.L.J. 175). On appeal,

**Held:** the date of the notice in Form 19C of the National Land Code must be intended to mean the date when the notice was served and therefore the period of one month in this case must be reckoned from April 6, 1966; the caveat was therefore still in force when the originating summons was filed in the High Court on April 8, 1966 and also when the collector purported to remove the caveat on April 29, 1966.

*Case referred to:—*

(1) *Associated Dominions Assurance Society Proprietary Ltd.* v. *Balmford* (1950), 81 C.L.R. 161.

FEDERAL COURT.

*K. L. Devaser* for the appellant.

*F. C. Arulanandom* for the respondent.

*Cur. Adv. Vult.*

**Azmi C.J. (Malaya):** This is an appeal against the judgment of Raja Azlan Shah J. rejecting appellant's application to extend the life of a private caveat registered against a piece of land to remain in force from the 30th December 1965 until such time as the appellant's claim in reference to the said land be disposed of by the High Court at Kuala Lumpur.

The facts may be summarised as follows:—

The respondent is the registered proprietor of the land in question.

By an agreement dated 13th December 1963 entered into between the respondent and the appellant, the said land was sub-leased to the appellant.

On 30th December 1965, the appellant lodged a caveat against the said land registered as "Private Caveat Presentation No. 398" under which the respondent as proprietor of the said land was forbidden absolutely the registration of any transfer, charge or lease of the said land until withdrawn by the appellant or by order of the court or until after the lapse of 21 days from the date of service of notice on the caveator (appellant) by the caveatee (respondent) at the address given in the caveat.

On the 21st March 1966, at the instance of the respondent, the collector issued notice of intended removal of the said caveat under the provisions of section 326 of the National Land Code.

On 6th April 1966, the said notice was served on the appellant.

On 8th April 1966, the appellant took out an originating summons applying for an order that an extension be granted for the said private caveat to remain in force from the 30th December 1965 until such time as the appellant's claim in the High Court was heard and disposed of. The summons came for hearing on 2nd May 1966 before Raja Azlan Shah J. The learned judge adjourned the matter for judgment and on the 7th May 1966 he made the order against which the appellant now appeals before this court.

On the 15th April 1966, the appellant through her solicitors wrote to the collector informing him of her intention to apply for the extension of the life of the caveat and on the 20th April 1966, the collector wrote in reply as follows:—

"In reply I wish to inform you that your claim which you have presented to the High Court on behalf of Lim Kiat Moy (f) concerning the above matter has been noted and this office will not cancel this caveat until a decision has been received from the High Court."

The collector, however, notwithstanding his undertaking not to do so, removed the caveat on 29th April 1966.

Section 326 of the National Land Code, which deals with the removal of private caveat by the registrar reads as follows:—

"326. (1) Any person or body whose land or interest is bound by a private caveat may at any time apply to the registrar for its removal pursuant to this section, and the registrar shall —

(a) serve upon the person or body at whose instance a caveat was entered a notice of intended removal in Form 19(c); and

(b) subject to sub-section (2), remove the caveat at the expiry of a period of one month specified in that notice

(2) The court may, on the application of any person or body on whom such notice had been served (and acting if the circumstances so require, *ex parte*), from time to time extend the said period of one month; and the registrar on being duly served any order of the court under this sub-section shall not remove the caveat until the expiry of the said period as thereby extended."

The notice on Form 19C served on the appellant reads as follows:—

FORM 19 C.

(Section 326)

NOTICE OF INTENDED REMOVAL OF CAVEAT

To: Lim Kiat Moy(f) of No. 80c Jalan Rodger, Kuala Lumpur, at whose instance Private Caveat Registered No. 398 is entered upon the title to the land described in the schedule below.

Whereas, the above caveat is expressed to bind the land itself/the particular interest described in the said schedule;

And Whereas the proprietor of the land has applied to me for the removal of the said caveat;

Take Notice that, in exercise of the powers conferred by section 326 of the National Land Code, I shall at the expiry of the period of one month from the date of this notice or such further period (if any) as the court may order remove the caveat.

Dated this 21st March 1966.

Sd.
Registrar, Collector,
(Ref: No. U. Lgt(T)1123) State/District Ulu Langat."

It would be seen that the collector or registrar removed the caveat on 29th April 1966 i.e. one month and 7 days after the date of the notice of intended removal under section 326, but since the notice was served on the 6th April 1966, only 23 days after service.

The order prayed for before the learned judge was that the period of one month be extended. The judge held the view that at that time the said period of one month had already expired, and he could not therefore, extend it.

It would be seen that in calculating the period of one month the learned judge reckoned the time to start from the date of the notice of intended removal namely the 21st March 1966.

The question as from what date the period of a month should be reckoned was not argued before the learned judge.

Mr. Devaser before us cited the Australian case of *Associated Dominions Assurance Society Proprietory Ltd.* v. *Balmford.*[1]

The facts of that case may be summarised as follows:

Section 55 of the Life Assurance Act 1945 (Australia) provides that, in certain circumstances, the Insurance Commissioner may serve on a Life Insurance Co. "a notice in writing calling upon it to show cause, within such period, not less than 14 days from the date of the notice, as specified in the notice," why an investigation of the affairs of the company should not be made and that "if the company fails, within the period specified in the notice to show cause to the satisfaction of the commissioner" the investigation may be made.

One of the questions to be decided by that court was as to the meaning of the words "the date of the notice." Is it the date of the service of the notice in writing upon the company or is it the date the document bears on its face? The court (Williams, Webb and Fullager JJ. (Latham C.J. dissenting) held that the date of the notice is the date of the service of the notice upon the company.

In coming to that decision Williams J. also referred to the interpretation in section 29 of the Australian Acts Interpretation Act which provides that unless the contrary is proved service by post shall be deemed to be effected at the time at which the letter should be delivered in the course of post. And the judgment also goes on to point out that,

"Section 55 does not require that there should be any date on the notice. It refers to the date of the

notice. It is the duty of the court to construe an Act so as to give effect to the intent of Parliament and, in enacting section 55, Parliament obviously intended that a company should have a period of at least fourteen days after it had received notice that the commissioner intended to investigate its affairs within which to show cause why such an investigation should not be made. It appears to me that the date of the notice must be the date on which it becomes an effective notice under the section — that is the date when the notice is actually served on the company or if sent by post is deemed to be served in accordance with section 146 of the Life Insurance Act and section 29 of the Acts Interpretation Act. As service of the present notice was effected on Monday 3rd May, that is the date of the notice. To comply with section 55, the period specified in the notice had to be a period of not less than fourteen days from 3rd May."

Webb J. has this to say:—

"If, as the respondent submits, any actual notice, however short, would comply with section 55 of the Life Insurance Act 1945, provided the notice specified a period of not less than fourteen days from the date appearing in the notice, then this express provision of a minimum period was a waste of words, as actually it achieved nothing. But that result is reached only if we insist on reading "date of the notice" in section 55 as referring to the date specified in the document, and not to the date of actual notice, i.e. of service of the notice. The latter meaning is, I think, open and should be taken to be that intended by Parliament."

On the other hand, Latham C.J. said:—

"The word "notice" may, it is true, mean either a document or a notification to a person in the sense of bringing a matter to his knowledge or giving him means of knowledge thereof. Section 146 of the Act provides an example of the use of the word in these two senses. In my opinion it is not possible, consistently with the terms of section 55, to construe the word "notice" in the phrase "the date of the notice" as meaning the date of service of the notice in writing upon the company. The section provides that the commissioner may serve on the company "a notice in writing." There must be a period specified "in the notice." The notice there mentioned must be the notice in writing. That period must be a period of not less than fourteen days from "the date of the notice," which must also refer to the before-mentioned notice in writing. Unless there is a date of that notice this requirement of the section cannot be satisfied. In my opinion there is no justification for in effect altering the words of the section by what is described as construction so as to give to the words "date of the notice" the meaning "date of service of the notice."

Section 430 of the National Land Code defines the word "notice" to include any notification, instrument or other document authorised or required by this Act to be served on any person or body.

Section 431(1) then provides the various methods of service of notices. In paragraph (d) it says that a notice may be served on a person for the purposes of this Act by sending the notice by a pre-paid registered post to a person at an address for service given. It then goes on to say in paragraph 2 of the said section that a notice served by a pre-paid registered post in paragraph (d) of sub-section 1 above shall be deemed to have been served at a time when the letter containing the notice would be delivered in the ordinary course of the post. There is however, a proviso to this which says that where the letter is returned through the post undelivered the notice shall not be deemed to have been served.

I am of the view, following the reasoning of the High Court of Australia in the *Associated Dominions Assurance Society Proprietary Ltd.* v. *Balmford,*[1] with which I with respect agree, that "the date of the notice" in Form 19C of the National Land Code must be intended to mean the date the notice was communicated to the appellant i.e. the date it was served on her. In the circumstances, the period of one month must be reckoned from the 6th April 1966 the date of the service and the caveat was therefore still in force when the originating summons was filed in the High Court on 8th April 1966 and also when the collector purported to remove the caveat on the 29th April 1966.

This appeal is therefore allowed, the decision of the High Court set aside, the respondent will pay the costs of this appeal and the costs in the High Court.

**Barakbah L.P.** concurred.

**MacIntyre J.:** I have had the advantage of reading the judgment of the Chief Justice, Malaya, in this appeal and I am in entire agreement with it.

*Appeal allowed.*

Solicitors: *K. L. Devaser & Co.; Arulanandom & Co.*

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## CHUA MUI NEE v. PALANIAPPAN

**[F.C. (Barakbah L.P., Azmi C.J. and Raja Azlan Shah J.) January 27, 1967]**

**[K.L. — Federal Court Civil Appeal No. X40 of 1966]**

*Marriage — Common law — Marriage between Hindu man and Chinese woman — Ceremony in Indian temple — Ceremony sufficient to constitute Hindu marriage — Lex loci — Validity of marriage — Polygamous marriage.*

The appellant a Chinese Buddhist married the deceased, a Nattakottai Chettiar and a Hindu, according to Hindu rites at a temple in Malacca in 1943. After the marriage they lived as husband and wife at Malacca and they had 3 children.

The respondent claimed to be the son of the deceased by his first wife. According to the respondent the deceased married his mother in India in 1925 and there were two children by the marriage — the respondent and his sister. The respondent alleged that the deceased had been to India three times after the war and had told them that he had taken a woman in Malaya but was not married to her. The respondent accordingly applied for letters of administration to the estate of the deceased and the applicant lodged a caveat. The matter then went up before Gill J. who held that the appellant was not the lawful widow and her children not the lawful children of the deceased as some of the essential items of a marriage ceremony had not been complied with when the appellant married the deceased. On appeal,